

# Testimony of Michael G. Palcic

## in favor of SB212 SD1

February 27, 2012

Dear Mr. Chairman and Members of the Judiciary and Labor Committee,

During the course of my service on the Oahu Apportionment Advisory Council (OAAC) I have become intimately aware, as I am sure you are as well, of a perplexing and difficult challenge that has plagued the Hawai'i Reapportionment Commission (HRC). This problem has prevented the timely completion of the reapportionment plan necessary to the electoral process in Hawai'i. This complication has tormented not just the current HRC, but others dating back at least 20 years.

I speak of the phrase embodied in the Hawai'i State Constitution, Article IV. Section 4, which states, in relevant part:

“The commission shall allocate the total number of members of each house of the state legislature being reapportioned among the four basic island units ... using the total number of permanent residents in each of the basic island units ...”

The great difficulty in achieving an acceptable reapportionment plan is that the crucial term “permanent residents,” remains undefined. This has led to a great deal of misunderstanding and confusion on the part of HRC members, legislators and other government officials as well as the public at large.

the Hawaii State House and Senate be set to match exactly the enumeration for redistricting the United States House of Representatives (1,360,301 persons).”

On June 28, 2011, the HRC did indeed adopt, by 8-1 vote, the population base of the United States Census Bureau as the basis for fulfilling the required reapportionment of our state legislature and thereby equating the Hawai‘i constitutional requirement of “permanent resident” with the U.S. Census Bureau’s concept of “usual resident.”

The official census counts all of Hawaii’s “usual residents” based upon extensively and clearly defined criteria detailed in the U. S. Census Bureau document entitled “Residence Rule and Residence Situations for the 2010 Census.”

The concept of “usual residence,” guiding census counts since the founding of the nation, states, “Usual residence is defined as the place where a person lives and sleeps most of the time. This place is not necessarily the same as the person’s voting residence or legal residence.” The guiding principle, succinctly stated, therefore is as follows:

For the purpose of the 2011 reapportionment within the State of Hawaii, “permanent resident,” as expressed in Article IV of the Hawaii Constitution, means any person counted as a usual resident of the state of Hawaii in the last preceding United States census.

If, due to threats of legal action and considerable political pressure, the HRC had not strayed from its adopted position by working to develop three arbitrary “extractions” from the U.S. Census and instead constructed a solid plan based upon this principle, a legally, morally and logically defensible plan would have been developed. As matters stand, the Hawai‘i Supreme

facilities, people in shelters or transitory locations, people in religious-related or workers' residential facilities.

The census counts all qualifying persons, not just those from "statistically significant" groups. The census refrains from using vague or undefined terms such as "home state," "nonresident," or the more convoluted "less certain non-permanent resident status."

Most people instinctively respond that everyone should be counted. It's a natural reaction emanating from a basic sense of fairness and without political calculation.

The census, being a snapshot of our population at a particular point in time, recognizes that populations are always in flux, so a new count is taken every 10 years. It serves Hawaii and the nation well enough in determining congressional apportionment, despite whatever anomalies occur. It serves equally well for state legislatures, councils, boards and the like.

Those who desire a specific result are not persuasive and are transparently in favor of helping a particular constituency. People who live here should be apportioned to our legislature and councils regardless of political consequences.

Please also consider:

- If Hawaii excludes its military and dependents from apportionment, these persons would be disenfranchised from apportionment to state legislatures, county and city councils, boards of supervisors and virtually all other locally elected lawmaking bodies in the country. Forty-eight states use the census counts for apportionment and the census reports these individuals as residing in Hawaii.

- If one lives here, whether stationed, schooled or jailed, one is affected by laws enacted here. If a proposed law affects a

# **THE SENATE**

THE TWENTY-SIXTH LEGISLATURE  
REGULAR SESSION OF 2012

## **COMMITTEE ON JUDICIARY AND LABOR**

Senator Clayton Hee, Chair

Senator Maile S.L. Shimabukuro, Vice Chair

### **NOTICE OF HEARING**

DATE: Monday, February 27, 2012

TIME: 9:35 a.m.

PLACE: Conference Room 016 State Capitol 415 South Beretania St.

### **A G E N D A**

**SB 212 RELATING TO LEGISLATIVE REAPPORTIONMENT.** Defines "permanent resident" for legislative reapportionment as any individual counted as a usual resident of the State in the last preceding U.S. census and requires reapportionment to be done using data on the total number of permanent residents in the State. (Proposed SD1) JDL

Copy of the proposed SD 1 is available from the Senate Document Center and on the Legislature's website: [www.capitol.hawaii.gov](http://www.capitol.hawaii.gov).

<<http://www.capitol.hawaii.gov/>>

**Decision Making to follow, if time permits.**

---

---

# A BILL FOR AN ACT

RELATING TO LEGISLATIVE REAPPORTIONMENT.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. Section 25-2, Hawaii Revised Statutes, is  
2 amended to read as follows:

3           "**§25-2 Duties.** (a) Legislative reapportionment. The  
4 commission shall reapportion the members of each house of the  
5 legislature on the basis, method, and criteria prescribed by the  
6 Constitution of the United States and article IV of the Hawaii  
7 Constitution[-], and using population data of the total number  
8 of permanent residents within the State of Hawaii. Pursuant  
9 thereto, the commission shall conduct public hearings and  
10 consult with the apportionment advisory council of each basic  
11 island unit. Not more than one hundred days from the date on  
12 which all members are certified, the commission shall cause to  
13 be given in each basic island unit, public notice of a  
14 legislative reapportionment plan prepared and proposed by the  
15 commission. At least one public hearing on the proposed  
16 reapportionment plan shall be held in each basic island unit  
17 after initial public notice of the plan. At least twenty days'  
18 notice shall be given of the public hearing. The notice shall



1 district lines for the districts from which the members of the  
2 United States House of Representatives allocated to this State  
3 shall be elected. The commission shall first determine the  
4 total number of members to which the State is entitled and shall  
5 then apportion those members among single member districts so  
6 that the average number of persons in the total population  
7 counted in the last preceding United States census per member in  
8 each district shall be as nearly equal as practicable. In  
9 effecting the reapportionment and districting, the commission  
10 shall be guided by the following criteria:

- 11 (1) No district shall be drawn so as to unduly favor a  
12 person or political party;
- 13 (2) Except in the case of districts encompassing more than  
14 one island, districts shall be contiguous;
- 15 (3) Insofar as practicable, districts shall be compact;
- 16 (4) Where possible, district lines shall follow permanent  
17 and easily recognized features such as streets,  
18 streams, and clear geographical features, and when  
19 practicable, shall coincide with census tract  
20 boundaries;
- 21 (5) Where practicable, state legislative districts shall  
22 be wholly included within congressional districts; and



1 members of the United States House of Representatives allocated  
2 to this State for the next five succeeding congresses.

3 (c) For the purposes of this section, "permanent resident"  
4 means any person counted as a usual resident of the State of  
5 Hawaii in the last preceding United States census."

6 SECTION 2. Statutory material to be repealed is bracketed  
7 and stricken. New statutory material is underscored.

8 SECTION 3. This Act shall take effect upon its approval.





LATE TESTIMONY

COMMENTS

**Senate JDL Committee  
Chair Clayton Hee, Vice Chair Maile Shimabukuro**

**Monday 2/27/12 at 9:35AM in Room 016  
SB212 – Legislative Reapportionment / Permanent Residents**

TESTIMONY

Nikki Love, Executive Director, Common Cause Hawaii

---

Chair Hee, Vice Chair Shimabukuro, and Committee Members:

**Common Cause Hawaii submits the following comments on SB212, proposed SD1.**

The proposed SD1 aims to define the term "permanent residents" in the reapportionment and redistricting process.

We have not taken a position on what population base should be used in the future, but we recognize the importance of clarifying the "permanent resident" definition and addressing the difficulties in calculating the population base. As we have seen in both 2001 and 2011, the Reapportionment Commissions have struggled with how to interpret that term and how to obtain appropriate data.

However, adopting the U.S. Census count as the population base for reapportionment and redistricting is a major decision. It would represent a dramatic change from recent practice, with major implications for representation throughout the state. For those reasons, such a change should be pursued via a state constitutional amendment, not via HRS. A constitutional amendment would allow greater public dialogue on this topic and allow the people to weigh in on such a critical issue to our democratic process.

Finally, we ask why SB212 is being used as vehicle for this content, when this content already exists in SB2615.

Mahalo for the opportunity to submit testimony.





LEAGUE OF  
WOMEN VOTERS\*

## COMMENTS

*League of Women Voters of Hawaii*

49 South Hotel Street, Room 314 | Honolulu, HI 96813

www.lwv-hawaii.com | 808.531.7448 | voters@lwvhawaii.com

Senate Committee on Judiciary and Labor  
Chair Senator Clayton Hee, Vice Chair Senator Maile S.L. Shimabukuro

Wednesday 2/27/12 at 9:35 AM in Room 016  
SB 212, S.D. 1— RELATING TO LEGISLATIVE REAPPORTIONMENT

### TESTIMONY

JANET Mason, Vice-President, League of Women Voters of Hawaii

Chair Hee, Vice Chair Shimabukuro, and Committee Members:

**The League of Women Voters of Hawaii offers comments only on SB212, S.D. 1** which proposes to define “permanent resident” as any person counted as a usual resident of the State of Hawaii in the last preceding United States census as the basis for legislative reapportionment. For more than 40 years the League has been very active in efforts to ensure the right to equal representation for residents of the State of Hawaii, including participation in the 1982 case of *Travis v. King* that held that voter registration records were not an acceptable reapportionment base.

Since November 1992, when voters ratified “total number of permanent residents” as the reapportionment base, subsequent State Reapportionment Commissions have struggled with the definition of this phrase, found in Article IV, Section 4 of our State Constitution. If Hawaii persists in using “total number of permanent residents” without a definition, the accuracy of the enumeration extracting nonresidents will continue to be challenged, and Court guidance on proposed Reapportionment plans may be vague. The League of Women Voters applauds this Committee’s efforts to define what this phrase means, but takes no position on this measure at this time.

Examination of this year’s reapportionment process provides insight into the challenge of arriving at an appropriate base without an adequate definition. The 2011 Reapportionment Commission extracted specified identifiable groups totaling approximately 108 thousand people from Hawaii’s total population for reapportionment purposes. Determination of the “total number of permanent residents” was arduous, but from what we can tell the effort was rational. Not *all* military personnel were excluded. Not *all* military dependents were excluded, and apparently only *all* college students who were temporary residents were excluded.

However, obtaining reliable data for this determination was excruciatingly difficult, and was a major factor in slow completion of both the first and second drafts of the 2011 Reapportionment Plan. I emphasize that obtaining such data on nonresident people by relying on informants is



LEAGUE OF  
WOMEN VOTERS®

*League of Women Voters of Hawaii*

49 South Hotel Street, Room 314 | Honolulu, HI 96813

www.lwv-hawaii.com | 808.531.7448 | voters@lwvhawaii.com

jeopardized by the fact that the military and other groups have no legal obligation to cooperate with the State in providing data.

Relying on special informants is not the only method that could be used to determine Hawaii's "permanent resident" base. The State of Kansas uses an alternate adjustment method in the form of a survey taken in conjunction with the U.S. population census to exclude nonresident population. Using this approach Kansas 2010 adjustment project spent just under \$200 thousand supplemented by extensive volunteer efforts, and extracted a mere 13,673 persons, leaving a total population of 2,853,118 persons.

And what happened to district boundaries this year? Obviously, excluding 108 thousand Hawaii residents from the apportionment base has implications for State Senate and State House district boundaries, but it is difficult to reach any conclusions about the impact. It is true that nonpermanent residents weren't assigned to a district anywhere in the United States for purposes of representation at the State level, because all the other States are relying on the census count to determine representation and these 108 thousand people weren't included in the census count for any state except Hawaii.

If one believes a fairer or truer apportionment base is the U.S. census of total population, so-called "permanent residents" in the same district with many "nonpermanent residents" who aren't counted results in too many people per legislator, diminishing the representation for permanent residents. For example, if Oahu's "properly" represented House districts have 20,000 permanent resident inhabitants, but there are 5 thousand nonpermanent residents in this same district, the argument could be made that the legislator actually represents 25 thousand people, not 20 thousand. This is very serious, leading to challenges to the reapportionment plan

The use of Federal population data may represent the safest approach in drafting a reapportionment plan. These plans are critically important in guaranteeing the right to vote as well as the right to equal representation.

Thank you for the opportunity to submit testimony.

## hee2 - Nahelani

---

**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Sunday, February 26, 2012 12:00 PM  
**To:** JDLEstimony  
**Cc:** czahn@hawaii.rr.com  
**Subject:** Testimony for SB212 on 2/27/2012 9:35:00 AM

LATE TESTIMONY

Testimony for JDL 2/27/2012 9:35:00 AM SB212

Conference room: 016  
Testifier position: Support  
Testifier will be present: No  
Submitted by: Charles Zahn  
Organization: Individual  
E-mail: [czahn@hawaii.rr.com](mailto:czahn@hawaii.rr.com)  
Submitted on: 2/26/2012

**Comments:**

I strongly support SB212 SD1 as proposed for this reason:

"Permanent resident" for legislative reapportionment as any individual counted as a usual resident of the State in the last preceding U.S. census and requires reapportionment to be done using data on the total number of permanent residents in the State.

Failure to make this change in the law will continue to promote the disenfranchisement of certain groups of individuals.

If these groups are not represented in Hawaii, they sure won't be represented anywhere else.